

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

May 2, 2001

**IN RE:**

**PETITION OF LYNWOOD UTILITY CORPORATION  
TO CHANGE AND INCREASE RATES AND CHARGES**

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**DOCKET NO.  
99-00507**

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**ORDER REAFFIRMING NON-RESIDENTIAL RATE  
AND APPROVING TAP FEE AGREEMENT**

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This matter came before the Tennessee Regulatory Authority (the "Authority" or the "TRA") at a regularly scheduled Authority Conference held on November 7, 2000, for consideration of the three issues remaining under consideration in this matter. As further explained below, the Authority addressed all three issues at the November 7, 2000 Authority Conference. Because the second issue, transfer of authority, has been placed in a separate docket, this Order does not set forth the Authority's resolution of that issue.

**BACKGROUND**

Lynwood Utilities Company ("Lynwood" or the "Company") filed a Petition to Change and Increase Rates and Charges (the "Petition") on July 15, 1999. A Hearing was held on January 26, 2000. At the regularly scheduled Authority Conference held on February 29, 2000, Lynwood was granted a rate increase, and a new billing system was approved for the Company. An Order reflecting these actions was entered on May 10, 2000. In approving Lynwood's request for a rate increase, the Authority held this docket open for further consideration of three issues: (1) the apparent overbilling of Lynwood's single non-residential customer, Walnut Grove Elementary School; (2) the failure of either Lynwood's previous owner, Mr. David Terry, or Lynwood's current

owner, Southern Utility Corporation (“Southern”), to obtain Authority approval of the transfer of Lynwood’s authority to provide utility service which came about when Mr. Terry sold Lynwood to Southern in 1999; and (3) the alleged waiver of certain tap fees by Mr. Terry.

After the Company implemented the rates approved on February 29, 2000, the Company and the Authority received numerous complaints from Lynwood’s customers concerning the new rates. Mr. Jacob C. (Chris) Martin, a Lynwood customer in the Cottonwood subdivision and spokesman for a group of Lynwood customers, requested permission to intervene in the case. At the regularly scheduled Authority Conference held on July 11, 2000, the Directors heard testimony on behalf of Lynwood customers from Mr. Martin, State Representative Charles Sargent, and Mr. Randolph Jones. The Authority granted Mr. Martin intervention as to the three outstanding issues, but not as to the rate increase.<sup>1</sup> The Authority also received numerous letters and facsimiles from Lynwood customers in the Cottonwood subdivision voicing concern about the amount of the rate increase as well as a petition from customers located in the Legends Ridge subdivision. A second Hearing was held in this matter on August 2, 2000 to hear testimony on the three issues remaining for determination.

## **FINDINGS AND CONCLUSIONS AS TO THE THREE REMAINING ISSUES**

### **A. The Overbilling of Walnut Grove Elementary School**

Lynwood has only one non-residential customer, the Walnut Grove Elementary School (the “School”). In its Petition for a rate increase, the Company proposed a non-residential rate of \$7.21 per 1,000 gallons of actual or assumed flow of water.<sup>2</sup> Lynwood’s existing non-residential tariff rate was \$1.40 per 1,000 gallons. At the January 26, 2000 Hearing, and as later explained by Lynwood in

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<sup>1</sup> See *Order Denying Petition for Reconsideration and Granting Limited Intervention by Jacob C. (Chris) Martin*, Docket No. 99-00507, August 2, 2000. Mr. Martin has been served with copies of all documents subsequently filed in Docket No. 99-00507 and in Docket No. 00-00690, which concerns Lynwood’s request for approval of the transfer of authority. At the August 2, 2000 Hearing, Mr. Martin was permitted to question witnesses.

<sup>2</sup> Petition, July 15, 1999, Exhibit 2 (Tariff).

a late-filed exhibit,<sup>3</sup> it was determined that the School was not being charged according to the tariff rate but was being charged a flat rate of \$787.50 per month. Lynwood reported that a calculation based on actual water usage figures for the School showed that neither the existing nor the proposed non-residential rate produced a charge as high as the flat rate being paid by the School.

As Lynwood reported, the existing rate of \$1.40 per 1,000 gallons produced a charge equivalent to a flat rate of \$113.86 when applied to the School's actual water usage. The proposed rate of \$7.21<sup>4</sup> produced a charge equivalent to a flat rate of \$586.41 per month, still below the School's flat rate of \$787.50 per month. The Company reported that in order to arrive at a rate based on water usage which would approximate the flat rate being charged the School, the Company would need a non-residential rate of \$9.68 per 1,000 gallons. The Company reported that the School "appears to be paying for sewer service at a higher rate than other local elementary schools receiving sewer service from the City of Franklin."<sup>5</sup> Furthermore, the "monthly sewer service rate based upon water usage necessary to maintain the school's current revenue contribution, which is \$9.68 per 1000 gallons, is 40% higher than the proposed residential sewer service rate."<sup>6</sup> The Company conceded that "[c]onsequently, an increase in the commercial rate for the school may not be just and reasonable."<sup>7</sup> Nevertheless, the Company stated, "[I]f the TRA agrees, Lynwood suggests that the TRA find that Walnut Grove be classified as a commercial customer and that it approve a rate of \$9.68 per 1000 gallons which is designed to have the school's average monthly bill remain the same based upon recent monthly water usage."<sup>8</sup>

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<sup>3</sup> Response to Fourth Information Request to Lynwood Utility Corporation in Docket No. 99-00507 Dated January 27, 2000 and Late Filed Exhibit Filing, February 8, 2000, p. 1.

<sup>4</sup> Lynwood, apparently by mistake, gives a figure of \$7.20 in its February 8, 2000 Response. *See id.*, p. 1.

<sup>5</sup> *Id.*, pp. 1-2.

<sup>6</sup> *Id.*, p. 2.

<sup>7</sup> *Id.*, p. 1.

<sup>8</sup> *Id.*

In its May 10, 2000 Order approving Lynwood's rate increase, the Authority approved the Company's "proposed residential and non-residential rates and other charges."<sup>9</sup> The Order also states that Lynwood's "proposed non-residential rates are approved, not to exceed \$787.50 per month."<sup>10</sup> The Authority also left this docket open for further consideration of the rate charged the School.<sup>11</sup>

Pursuant to its May 10, 2000 Order, the Authority issued and served upon Mr. Terry a subpoena duces tecum requiring Mr. Terry to testify at the August 2, 2000 Hearing. The Authority published a Notice of the Hearing on July 19, 2000. Mr. Martin appeared at the Hearing on behalf of Lynwood customers and was permitted to question witnesses.

At the August 2, 2000 Hearing, Mr. Terry testified that the School was being charged the same flat rate of \$787.50 per month as early as January 1992. In its response to an Authority request for information, filed on October 19, 2000, Lynwood reported on a meeting with representatives of the Williamson County School Board at which the rate being charged the School was discussed. Lynwood stated that it had been provided with correspondence showing how the rate was originally calculated and establishing that the rate was charged to the School when it opened in 1989. From these documents, submitted by the Company, it is apparent that the Williamson County School Board was aware of the rate at the time that it was initially charged and agreed to pay that rate.<sup>12</sup>

On October 6, 2000, Lynwood filed a Request for Tariff Change to Implement Sewer Bill Adjustment for Water Used for Irrigation and for Clarification of Order Approving Rate Increase for Non-Residential Customers (the "Request") with the Authority. In its Request, Lynwood states that the Company has been uncertain about what rate was approved by the Authority in the May 10, 2000 Order. "Because of the uncertainty about what rate Lynwood should be charging the school," the

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<sup>9</sup> See *Order Approving Rate Increase*, Docket No. 99-00507, May 10, 2000, p. 6.

<sup>10</sup> *Id.*, p. 5.

<sup>11</sup> See *id.*, pp. 6-7.

<sup>12</sup> Response to Authority Staff Data Request, Docket No. 99-00507, October 19, 2000.

Request states, “Lynwood has continued to charge the school \$787.50 per month regardless of usage.”<sup>13</sup> The Request further states that

Lynwood seeks a clarification from the Authority on the rate it should be charging the school. Lynwood suggests that the Authority approve the flat rate of \$787.50 which the school has been paying for several years. The school’s monthly sewer bill is subject to wide variation depending on whether children are in school during the month of service. This rate will maintain the school’s revenue contribution to Lynwood which will not have to be picked up by residential customers. This rate will also permit the school to better budget its monthly sewer costs.<sup>14</sup>

At the November 7, 2000 Authority Conference, the Directors made clear that in approving Lynwood’s Petition for a rate increase in February 2000 the Authority approved a non-residential rate of \$7.21 per 1,000 gallons, to be capped at \$787.50 per month. In addition, the Directors unanimously reaffirmed the non-residential rate for Lynwood of \$7.21 per 1,000 gallons, capped at \$787.50 per month.

#### **B. Approval of the Transfer of Authority**

At the August 2, 2000 Hearing, after hearing testimony from Mr. Terry and Mr. Lamb concerning the failure to obtain Authority approval of the transfer of authority which resulted when Mr. Terry sold Lynwood to Southern, the Authority directed Lynwood to file a request for approval of the transfer.<sup>15</sup> On August 7, 2000, Lynwood filed a petition seeking Authority approval *nunc pro tunc* of the transfer of ownership and control of Lynwood from Mr. Terry to its current owner, Southern. This petition for approval of the transfer was filed in a new docket, Authority Docket No. 00-00690.<sup>16</sup> Lynwood’s petition for approval of the transfer was considered by the Directors at the

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<sup>13</sup> Request, Docket No. 99-00507, October 6, 2000, p. 8. The Request raises other issues, specifically dealing with a proposed adjustment in customer bills to allow for water used for irrigation purposes, that are not addressed in this Order.

<sup>14</sup> *Id.*, pp. 8-9.

<sup>15</sup> See *Order Approving Rate Increase*, Docket No. 99-00507, May 10, 2000, pp. 1-4, for a discussion of the events surrounding Mr. Terry’s sale of the Company to Southern.

<sup>16</sup> Although this petition was placed in a new docket, Authority Docket No. 00-00690, Mr. Martin, as Intervenor in Docket No. 99-00507, was served with copies of all correspondence related to Lynwood’s petition for approval of the transfer.

November 7, 2000 Authority Conference, and the Directors unanimously voted to grant the Petition. An Order reflecting this action was issued in Docket No. 00-00690 on January 24, 2001.

### **C. The Alleged Waiver of Tap Fees**

As explained in the Authority's May 10, 2000 Order, Lynwood's president testified at the January 26, 2000 Hearing that the Company's previous owner, Mr. Terry, did not require payment of tap fees from owners of certain lots in the Legends Ridge subdivision, which is one of three subdivisions served by Lynwood.<sup>17</sup> This "waiver" of payment of tap fees resulted in a loss of revenue to Lynwood.<sup>18</sup> Even though the Authority approved an increase in tap fees for the Company, this docket was left open for further consideration of the waiver of tap fees by Mr. Terry and the resulting impact on Lynwood's revenues.

In advance of the August 2, 2000 Hearing, Lynwood advised the Authority in a pre-hearing brief filed on July 28, 2000, that Lynwood and Mr. Terry had entered into an agreement concerning the waived tap fees.<sup>19</sup> The agreement provides that Mr. Terry will make payment to Lynwood of \$138,000 on or before June 30, 2001. The payment will be made pursuant to a promissory note that is secured by a deed of trust on an unimproved lot in the Legends Ridge Subdivision. Lynwood further stated with regard to the tap fee settlement:

The \$138,000 amount of the settlement is sufficient to cover the amount of the tap fees which were waived by the previous management of Lynwood. Mr. Lamb testified at the rate hearing that he documented 77 taps in Legends Ridge which were not collected. Therefore, the amount of tap fees waived was \$134,750. Lynwood contends that the settlement reached with Mr. Terry is in the best interests of its customers. Lynwood will not have to seek to recover the tap fees from the individual homeowners in Legends Ridge. In addition, Lynwood will not have to incur the expense of litigation and uncertainty of litigation with Mr. Terry to attempt to recover these amounts and obtain a judgment which it may or may not be able to collect. Should Lynwood be required to sue on the promissory note to collect the amount of the note, such litigation will be much simpler and less costly than a suit to try to recover the waived tap fees and other damages from Mr. Terry.

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<sup>17</sup> *Order Approving Rate Increase*, Docket No. 99-00507, May 10, 2000, p. 4.

<sup>18</sup> *See id.*, pp. 5-7.

<sup>19</sup> *See Pre-Hearing Brief of Lynwood Utility Corporation*, Docket No. 99-00507, July 28, 2000.

Lynwood recognizes that when it receives the payment under the promissory notes, it will need to determine how to treat the funds received for ratemaking purposes. In its rate case the Authority approved Lynwood treating the payment of tap fees as contributions in aid of construction. In all likelihood Lynwood will suggest that the funds received up to the amount of the tap fees waived of \$134,750 be recorded as contributions in aid of construction rather than operating revenue. Lynwood is willing to work with the Authority's Staff to determine how best to treat these funds when they are received.<sup>20</sup>

At the August 2, 2000 Hearing, Mr. Terry admitted that tap fees had not been collected for certain lots in the Legends Ridge subdivision.<sup>21</sup> In support of the proposed tap fee settlement, Lynwood informed the Authority that there are no encumbrances on the lot in Legends Ridge which is to be used as security for the promissory note and agreed to provide title insurance and title search documents related to the lot.<sup>22</sup> These documents were entered into the record in this matter as late-filed exhibits.<sup>23</sup> At the November 7, 2000 Authority Conference, the Authority unanimously approved the tap fee settlement between Lynwood and Mr. Terry.

**IT IS THEREFORE ORDERED THAT:**

1. Lynwood's non-residential rate is set at \$7.21 per 1,000 gallons of water usage, capped at a charge of \$787.50 per month, as previously approved in the Authority's May 10, 2000 Order in this docket and reaffirmed at the November 7, 2000 Authority Conference;
2. The tap fee settlement reached between Lynwood and Mr. Terry, in which Lynwood will receive payment of \$138,000 on or before June 30, 2001 in the form of a promissory note which is secured by real property in reimbursement for waived tap fees, is approved;
3. Any party aggrieved with the Authority's decision in this matter may file a Petition for Reconsideration with the Authority within fifteen (15) days from the date of this Order; and

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<sup>20</sup> Pre-Hearing Brief of Lynwood Utility Corporation, Docket No. 99-00507, July 23, 2000, pp. 3-4.

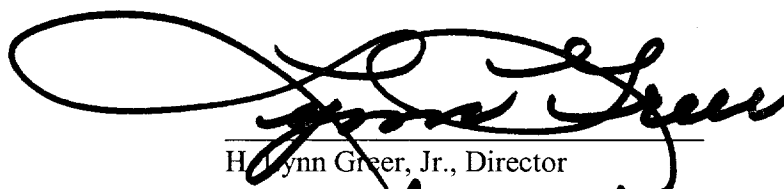
<sup>21</sup> Transcript of Proceedings, Docket No. 99-00507, August 2, 2000, pp. 21-22.

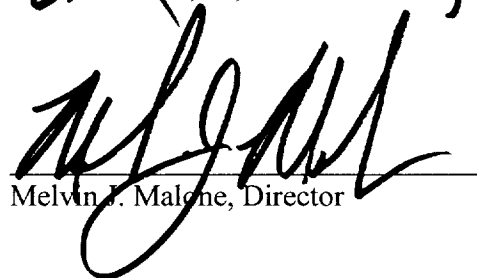
<sup>22</sup> *Id.*, pp. 10, 12.

<sup>23</sup> Late-Filed Exhibits filed August 8, 2000 (First Part) and November 14, 2000 (Second Part).

4. Any party aggrieved with the Authority's decision in this matter has the right of judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty (60) days from and after the date of this Order.

  
Sara Kyle, Chairman

  
Hollynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary